



United States Environmental Protection Agency  
Office of Water  
Office of Science and Technology



## Federal Water Quality Standards for Waters in Indian Country

July 2003

### What Is the Concern?

Only 23 Indian tribes have water quality standards in place under the Clean Water Act. Without applicable standards, the Clean Water Act's mechanisms for protecting water quality in Indian country are limited.

### What Has Been Done Previously?

In 1998-2000 EPA, in consultation with the Tribal Caucus and over 235 tribal representatives, developed the concept of promulgating Federal water quality standards as a way to protect Indian country waters currently without Clean Water Act standards. On January 19, 2001, Administrator Carol Browner signed a proposed rule to promulgate "core" Federal standards in Indian country except where tribes "opt out" to develop or work with EPA on specific standards. "Core" standards would include the basic provisions of standards as a first step that could be supplemented with more detail at a later date. A few days later, on January 22, 2001, EPA withdrew that proposal to allow Administrator Christine Whitman to review it. Administrator Whitman requested that EPA conduct additional consultation with tribes and states before releasing a proposed rule.

EPA has found that a number of issues had been raised both before and after 2001, with a mix of opinions including varying views from Tribes. EPA believes it should further consult with Tribes and States and obtain views from the public on specific aspects of promulgating Federal water quality standards for waters of Indian country.

### What Is EPA Doing Now?

EPA is starting a new rulemaking process. The first step will be to develop an Advance Notice of Proposed Rulemaking (ANPRM). This will be a notice published in the Federal Register that describes the situation and requests comment on specific issues and possible regulatory text that EPA could use to promulgate Federal water quality standards for Indian country waters. The notice will openly and objectively present options and issues and will not predetermine any outcome. The notice will be detailed enough that all parties can see what provisions EPA is contemplating and lead to thorough discussion of issues involved. The notice will pose specific questions about the provisions such as:

- Should EPA promulgate "core" standards? Individually tailored standards?
- For tribes who wish to develop their own plan for establishing standards, which is preferred: an "opt out" or an "opt in" approach for Federal standards?
- Are there waters where absence of water quality standards is preventing a solution to water quality problems?
- What are the potential impacts of having and not having water quality standards in place in Indian country?

### **How and When Will EPA Develop the ANPRM?**

To help develop the ANPRM, EPA will consult closely with Tribal organizations including tribal members of EPA's national and regional Tribal Operations Committees and other key tribal organizations during July-August 2003. EPA will also consult with interested state representatives. The goal will be to ensure the ANPRM elicits the best possible information and views. EPA plans to prepare the ANPRM for signature in November 2003.

### **How Will the ANPRM Comment Process Work?**

EPA will ask readers of the ANPRM to provide written comments in response to the questions and issues posed in the ANPRM. The notice itself will specify how to submit written comments. EPA may also hold one or more public hearings or meetings to obtain views. EPA will also conduct government-to-government consultations with tribes and tribal leaders to ensure we understand the full range of tribal views.

### **Can Tribes Apply To Develop Their Own Standards?**

Absolutely. EPA's preference is for Tribes to develop and adopt their own federally-approved water quality standards where possible. EPA will continue to assist Tribes to apply for approval for program authorization under the Clean Water Act and to develop their own standards. EPA has approved applications from several tribes in the past year.

### **Is There Any Additional Information Available on EPA's Website?**

Copies of this fact sheet and other relevant information regarding Federal water quality standards for waters of Indian country are available on the Internet at <http://www.epa.gov/ost/standards/tribal/>

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